

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JEFFREY P. BERTELSEN and AMY L.)
BERTELSEN, husband and wife, and)
the marital community comprised)
thereof; BERTELSEN FOOD & GAS,)
INC., a Washington corporation;)
and DR. RICHARD BERTELSEN and)
JANIS JO BERTELSEN, husband and)
wife, and the marital community)
comprised thereof,)

Plaintiffs,)

v.)

ROGER K. HARRIS; ROGER K. HARRIS,)
PC, an Oregon Professional)
Services Corporation; HARRIS BERNE)
CHRISTENSEN, LLP, an Oregon)
Limited Liability Partnership; and)
RONALD E. McPHERSON,)

Defendants.)

No. CV-04-5135-LRS

**FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

FINDINGS OF FACT

1. Jeff and Amy Bertelsen owned six ARCO branded gas stations for a number of years in the 1990's and operated the stations through their corporation, Bertelsen Food and Gas, Inc. In December 2000, Bertelsen Food & Gas, Inc., ceased to operate because it had no money to pay ARCO for gasoline or to pay the other vendors who also stopped providing products to the stations. (Agreed facts.)

1 2. Jeff and Amy Bertelsen retained Kennewick attorney, William
2 Hames to provide advice about filing for bankruptcy, both for them
3 individually as well as for the corporation, Bertelsen Food & Gas,
4 Inc.

5 3. Jeff Bertelsen knew attorney Roger Mr. Harris had extensive
6 legal experience in dealing with gas station franchises, and in lieu
7 of immediately filing for bankruptcy, Jeff Bertelsen contacted Mr.
8 Harris to see if Mr. Harris could assist the Bertelsens in trying to
9 resurrect their relationship with ARCO, so they could attempt to
10 start getting gas again from ARCO and could continue to run the
11 stations as ARCO branded stations.

12 4. Jeff and Amy Bertelsen signed a retainer agreement in March,
13 2001, agreeing to pay Mr. Harris' hourly rate. (Agreed facts, Trial
14 Exhibit 21.)

15 5. Jeff and Amy Bertelsen received bills from Mr. Harris
16 between March, 2001, and May, 2001, for the work he performed.
17 (Agreed facts.)

18 6. Jeff and Amy Bertelsen never objected to any of these bills
19 for the work done or the amount charged during this period in the
20 spring of 2001. (Agreed facts.)

21 7. It became clear during the spring of 2001 that ARCO had no
22 interest in continuing a business relationship with Jeff Bertelsen or
23 Bertelsen Food & Gas, Inc.

24 8. The Bertelsens thought they would try to sell the six
25 stations as a business solution. In May, 2001, Jeff and Amy

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1 Bertelsen requested that Mr. Harris and Mr. McPherson, an industry
2 consultant, try to find a buyer for the six stations.

3 9. Jeff and Amy Bertelsen did not have the money to pay
4 additional hourly attorney fees or consulting fees as of May, 2001,
5 and asked if Mr. Harris and Mr. McPherson would work on a contingent
6 basis.

7 10. Mr. Harris discussed the issue with Mr. McPherson to see if
8 Mr. McPherson would be willing to attempt to market these six gas
9 stations on a 1% contingency fee basis.

10 11. Jeff and Amy Bertelsen signed the corporate resolution of
11 May 29, 2001. (Agreed facts, Trial Exhibit 410.)

12 12. The May 29, 2001, corporate resolution provided that Jeff
13 and Amy Bertelsen could terminate the agreement early if they wanted,
14 and pay the hourly rates of \$150 for Mr. McPherson and \$195 for Mr.
15 Harris. (Trial Exhibit 410.)

16 13. The term of the May 29, 2001, agreement was 90 days.
17 (Agreed facts, Trial Exhibit 410.) Over the next 90 days, from May
18 29, 2001, until the end of August, 2001, no buyer for the six
19 stations was found. (Agreed facts.)

20 14. In late August, at the time the May 29, 2001 contingency
21 fee agreement was to expire, it was quite clear that the Bertelsens
22 were not going to obtain the \$11 million minimum sales price. At
23 that time, Jeff and Amy Bertelsen still wanted to try to market the
24 stations and they wanted to sign a new contingency fee agreement.

25 15. Mr. Harris discussed with Jeff and Amy Bertelsen the fact
26 that the new agreement would be based upon a 1.5% contingency.

1 16. The September 19, 2001, corporate resolution provided for
2 the 1.5% contingency fee percentage to apply to the "gross value of
3 any transaction entered into with third parties." (Trial Exhibit
4 70.) It also provided for reimbursement of the out of pocket
5 expenses of Mr. Harris and Mr. McPherson. (Trial Exhibit 70.)

6 17. Just like the earlier May 2001, agreement, the September
7 2001, corporate resolution specifically retained Mr. Harris and Mr.
8 McPherson and provided that, if the Bertelsens wanted to terminate
9 either Mr. Harris or Mr. McPherson (or both) they could, but they
10 would be responsible for the \$150/ hour for Mr. McPherson and \$195/
11 hour for Mr. Harris. (Trial Exhibit 70.)

12 18. An oil company called Tesoro agreed to lease the six
13 stations, paying a \$1,000,000 option to purchase at preset prices
14 that totaled \$8.5 million. The Tesoro transaction also involved
15 monthly lease payments of more than \$60,000. (Trial Exhibit 422.)

16 19. This Tesoro lease - option to purchase transaction closed
17 on October 31, 2001. (Agreed facts.)

18 20. Various creditors of Bertelsen Food & Gas Inc., and Jeff
19 and Amy Bertelsen would not agree to allow the Tesoro transaction to
20 go forward unless the monthly rent was paid to a trust, as opposed to
21 being paid directly to Jeff or Amy Bertelsen.

22 21. A trust had to be established in order for the Tesoro
23 transaction to go through. Mr. Harris therefore prepared the
24 declaration of trust and collection account. (Trial Exhibit 98.)

25 22. The monthly rent payments from Tesoro went directly into
26 the trust account and payments were then made directly to the various

1 creditors from that trust account on a monthly basis. As provided in
2 the trust agreement, some of the excess funds left over each month
3 after payment of various creditors were used to help fund the defense
4 of Jeff and Amy Bertelsen, as well as Bertelsen Food & Gas, Inc., in
5 the pending ARCO lawsuit.

6 23. Ultimately, Jeff and Amy Bertelsen requested that attorney
7 David Peterson replace Mr. Harris as trustee on this Tesoro trust and
8 the trust was then transferred to Mr. Peterson with the consent of
9 the various creditors.

10 24. Without taking into account the annual rent from Tesoro,
11 which totaled approximately \$750,000 per year, the 1.5% contingency
12 was applied by Mr. Harris and Mr. McPherson to the \$1 million option
13 payment and the \$8.5 million option prices. Jeff and Amy Bertelsen
14 received correspondence from Mr. Harris before the October 31, 2001,
15 closing, which showed this contingency fee. (Agreed facts.)

16 25. Jeff and Amy Bertelsen attended the closing on October 31,
17 2001, and signed the various closing documents.

18 26. Jeff and Amy Bertelsen knew, as of October 31, 2001, that
19 the \$142,500 fee was being paid to Mr. Harris and Mr. McPherson.
20 (Agreed facts.)

21 27. At the October 31, 2001, closing, Jeff and Amy Bertelsen
22 did not pose any objections to this \$142,500 fee and did not dispute
23 this 1.5% calculation.

24 28. Jeff Bertelsen did not feel that Mr. McPherson did anything
25 improper and that Mr. McPherson earned his \$70,000 of this \$142,500
26 payment.

1 29. During the period May 29 to October 31, 2001, Mr. Harris
2 and Mr. McPherson spent a significant amount of time putting together
3 sales information, contacting potential buyers, traveling around the
4 Pacific Northwest and conducting numerous conferences by telephone.

5 30. Based on Mr. Harris' recollection of the work done during
6 May 29, 2001, to October 31, 2001, the total hours spent was, on
7 average, at least 80 hours per month, for a total of at least 400
8 hours. Written billing records showing exact time spent by Mr.
9 Harris no longer exist.

10 31. Based on the 400 hours or more, at the rate of \$195 per
11 hour set out in the March 21, 2001, retainer agreement, the fee only,
12 not including expenses, would have been at least \$78,000. The actual
13 contingency fee, inclusive of expenses, paid on October 31, 2001, was
14 \$72,500. Under the September 19, 2001, corporate resolution, the
15 Bertelsens were obligated to pay the out of pocket expenses of Mr.
16 McPherson and Mr. Harris, but they were never charged any such
17 expenses.

18 32. The total value of this Tesoro transaction to Jeff and Amy
19 Bertelsen involved significant financial benefits. There were
20 initially six stations and Tesoro was required to pay \$60,208.32 per
21 month for the first five years of the lease from November, 2001, to
22 November, 2006.

23 33. The lease provided that Tesoro would have an option at the
24 end of the fourth year to cancel any particular lease with one year
25 advance notice in year three. Tesoro cancelled the Clearwater and
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1 Steptoe leases. Jeff and Amy Bertelsen then sold those stations in
2 2005 for \$1,850,000.

3 34. The total annual rent from November, 2001, to November,
4 2005, was \$2,890,000. Rent from November, 2005, to November, 2006,
5 will be \$528,146.36 for a total of \$3,418,147.30. For a period of
6 November, 2006, to November, 2011, the total rent will be \$2,926,674.

7 35. The rental income totals \$6,344,888.50 through the ten year
8 period of the lease to November, 2011. Added to this amount is the
9 \$1,000,000 Tesoro paid in October, 2001, as well as the \$1,850,000
10 Jeff and Amy Bertelsen obtained in the 2005 sale of the Clearwater
11 and Steptoe stations, for a total of \$9,194,888.50, exclusive of the
12 value which remains in the stations still owned by Jeff and Amy
13 Bertelsen.

14 36. Based upon these calculations, the actual value of the
15 Tesoro transaction to Jeff and Amy Bertelsen is more than
16 \$9,194,888.50 and may exceed \$15 million.

17 37. ARCO filed a lawsuit against Jeff and Amy Bertelsen,
18 Bertelsen Food & Gas and Dr. and Mrs. Bertelsen in August, 2001.
19 (Agreed facts.) Dr. Bertelsen knew that Harris was representing Jeff
20 Bertelsen in the ARCO lawsuit, so, after he was served with the ARCO
21 complaint, he contacted Mr. Harris.

22 38. Dr. Bertelsen had an initial meeting with Mr. Harris in
23 September, 2001. (Agreed facts, Trial Exhibits 59 and 60.)

24 39. As of the time the ARCO complaint was filed, Jeff and Amy
25 Bertelsen had no recollection of any personal guarantee signed by Dr.

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1 and Mrs. Bertelsen, nor did Dr. and Mrs. Bertelsen recall signing any
2 guaranties.

3 40. At the initial meeting in September, 2001, Mr. Harris
4 discussed potential conflicts that could arise in representing all
5 the Bertelsens and suggested to Dr. and Mrs. Bertelsen that they
6 confer with their own counsel to evaluate whether they should be
7 separately represented.

8 41. Mr. Harris explained in September, 2001, the possible
9 conflict that might arise in the future if the Bertelsen family
10 clients did not agree upon a trial strategy or began "finger
11 pointing" at one another.

12 42. The Bertelsen family agreed that, despite the potential
13 conflict, Mr. Harris would go forward and represent the family group
14 in the ARCO lawsuit.

15 43. Dr. and Mrs. Bertelsen signed the retainer agreement of
16 September 7, 2001. (Agreed facts, Trial Exhibits 59 and 60.)

17 44. Mr. Harris sent another follow up conflict disclosure to
18 Dr. and Mrs. Bertelsen the next month on October 22, 2001. (Trial
19 Exhibit 78.)

20 45. In the October 22, 2001, letter, Mr. Harris recommended
21 that Dr. and Mrs. Bertelsen seek separate legal advice and confirmed
22 the recommendation to seek independent legal counsel had been
23 previously given. (Trial Exhibit 78.)

24 46. This letter of October 22, 2001, which was sent to Dr.
25 Bertelsen and Jeff Bertelsen (as the representative of Bertelsen Food
26 & Gas, Inc.) advised the Bertelsen family members to have this issue

1 of representation in the ARCO lawsuit reviewed by independent
2 counsel. (Trial Exhibit 78.)

3 47. Dr. and Mrs. Bertelsen signed the October 22, 2001 waiver
4 letter. (Trial Exhibit 78.)

5 48. Even though Mr. Harris had recommended that he retain
6 independent counsel at the time, Dr. Bertelsen decided not to do so.

7 49. Dr. Bertelsen had the funds to hire a lawyer to review
8 these matters and, in fact, was being represented by two attorneys,
9 Colonel Betz and William Allen, during this same time frame.

10 50. On October 29, 2001, Mr. Harris wrote another letter to all
11 the Bertelsen family members setting out the agreement as to how the
12 ARCO litigation would proceed and how it would be funded. (Trial
13 Exhibit 82.)

14 51. In this letter of October 29, 2001, Mr. Harris recommended
15 that each of the Bertelsens seek independent counsel in connection
16 with this ARCO litigation to be fully advised of their rights.
17 (Trial Exhibit 82.)

18 52. Jeff and Amy Bertelsen, as well as Dr. and Mrs. Bertelsen,
19 signed an acknowledgment of this October 29, 2001, conflict
20 disclosure and recommendation to seek legal advice. (Trial Exhibit
21 82.)

22 53. Throughout Mr. Harris' representation, Mr. Harris
23 recommended Dr. Bertelsen seek independent legal advice.

24 54. Despite the potential conflict in representing the debtors
25 (Jeff and Amy) and the potential guarantors (Dr. and Mrs. Bertelsen),
26 Jeff Bertelsen never felt there was a time during the pendency in the

1 ARCO litigation in which Mr. Harris failed to make an argument on
2 behalf of Jeff and Amy Bertelsen because he was representing the
3 entire family.

4 55. Dr. Bertelsen was likewise unaware of any conduct by Mr.
5 Harris during the representation of Mr. Harris that was detrimental
6 in any way to Dr. Bertelsen, based on the fact that Mr. Harris was
7 representing all the defendants, instead of just Dr. Bertelsen.

8 56. Mr. Harris continually sent correspondence to Dr.
9 Bertelsen, as well as Jeff and Amy Bertelsen, advising them of the
10 status of the ARCO litigation and recommending they seek independent
11 counsel on various issues as they arose during the course of the ARCO
12 litigation. (Trial Exhibit 130.)

13 57. Mr. Harris' pursuit of the PMPA defense in the ARCO
14 litigation was the result of an informed judgment and was reasonable,
15 despite the fact that the defense ultimately did not succeed on
16 summary judgment. Plaintiffs failed to prove any damages were
17 caused by the assertion of the PMPA preemption affirmative defense.

18 58. Dr. Bertelsen was advised by Mr. Harris throughout the ARCO
19 litigation to review the law firm bills and contact him if he had any
20 questions. Dr. Bertelsen never contacted Mr. Harris to ask him any
21 questions about any of the billings.

22 59. Dr. Bertelsen never reviewed a bill from Mr. Harris and
23 felt the amount charged was inappropriate. (Agreed facts.)

24 60. Neither Mr. Harris or his firm tried to hide anything from
25 the Bertelsens with respect to expenses or payments made to experts
26 in the ARCO litigation.

1 61. Jeff and Amy Bertelsen have no dispute over the attorney
2 fee bills Mr. Harris sent to them.

3 62. There was no payment by Jeff and Amy Bertelsen for any of
4 the attorney time or expenses of Mr. Harris in the defense of the
5 ARCO lawsuit, nor was there any payment for time or expenses incurred
6 pursuant to the May 29, 2001, corporate resolution.

7 63. There is no evidence that Mr. Harris engaged in any unfair
8 or deceptive billing conduct in his representation of Jeff and Amy
9 Bertelsen during the course of the ARCO litigation.

10 64. Dr. Bertelsen told the IRS in his 2002 tax filing that Dr.
11 Bertelsen was an owner of Bertelsen Food & Gas and "materially
12 participated" in the operation of that business in 2002 and that
13 Bertelsen Food & Gas paid \$80,000 in attorney fees. (Trial Exhibit
14 472.)

15 65. In September, 2002, Amy Bertelsen told Mr. Harris that her
16 husband had paid a \$3,000 "kickback" to a vendor, Dale Cole, to
17 generate a false invoice, which Jeff Bertelsen used to obtain
18 approximately \$178,000 of funding from ARCO for work that was never
19 intended to be done.

20 66. After hearing this from Amy Bertelsen, Mr. Harris
21 approached Jeff Bertelsen and Jeff Bertelsen did not deny this had
22 occurred.

23 67. In October, 2002, while Mr. Harris was attempting to
24 negotiate a settlement with ARCO's attorney, the Bertelsen family
25 members began taking conflicting positions with respect to
26 settlement. (Trial Exhibit 459, 464.) Jeff and Amy Bertelsen

1 claimed they had no cash to contribute to a settlement with ARCO and
2 Dr. Bertelsen was not willing to contribute sufficient cash out of
3 his own pocket to fund the settlement. (Trial Exhibit 464.)

4 68. Although Jeff and Amy Bertelsen had earlier signed
5 indemnity agreements with Dr. and Mrs. Bertelsen, agreeing that they
6 would indemnify Dr. and Mrs. Bertelsen for all attorney fees paid and
7 all amounts paid in settlement, in October, 2001, Amy Bertelsen
8 wanted to be relieved of any such indemnity obligation. (Trial
9 Exhibit 464.)

10 69. The position by the Bertelsen family members and the
11 "kickback" disclosure caused Mr. Harris to conclude that he had to
12 withdraw from representation of the Bertelsens.

13 70. Mr. Harris contacted the Oregon State Bar Association and
14 talked to ethic's counsel, who confirmed his decision to resign as
15 counsel for the Bertelsens.

16 71. Even though Mr. Harris again recommended that all the
17 Bertelsens seek new counsel at the time of the withdrawal, they
18 decided not to retain new counsel. Dr. Bertelsen felt that he might
19 have a better chance of settling with ARCO once Mr. Harris withdrew.

20 72. After Mr. Harris withdrew, Jeff Bertelsen dealt directly
21 with attorney Doug Berry, who represented ARCO. (Agreed facts.)

22 73. After Mr. Harris withdrew, a draft settlement proposal was
23 prepared by Doug Berry, and at that point Dr. Bertelsen retained an
24 attorney, Bruce Smith, to review the settlement. (Agreed facts.)

25 74. Attorney Smith advised Dr. Bertelsen to go ahead and sign
26 the settlement with ARCO. (Agreed facts.)

1 75. After Mr. Harris withdrew, Dr. and Mrs. Bertelsen settled
2 with ARCO for a payment of \$225,000. (Agreed facts.)

3 76. Jeff and Amy Bertelsen also settled with ARCO after Mr.
4 Harris withdrew. Jeff and Amy Bertelsen ultimately paid \$550,000 in
5 2005 for a release of the ARCO claims and judgment. (Agreed facts.)

6 77. Dr. Bertelsen received \$35,000 in reimbursement from the
7 \$80,000 paid, so the net unreimbursed attorney fees and expenses is
8 \$45,000. (Agreed facts.)

9 **CONCLUSIONS OF LAW**

10 1. The corporate resolution of May 29, 2001, was not a
11 "modification" of the earlier March 21, 2001, hourly retainer
12 agreement. Rather, the March hourly retainer agreement concerned Mr.
13 Harris' work in trying to resurrect the Bertelsen's business
14 relationship with ARCO. The May 29 corporate resolution dealt with
15 the potential sale of the six gas stations through the efforts of Mr.
16 Harris and Mr. McPherson.

17 2. Even if the May 29, 2001, corporate resolution was
18 considered a "modification" of the March 21, 2001, retainer
19 agreement, the May 29 agreement was fair and reasonable and was
20 signed by Jeff and Amy Bertelsen, as well as Bertelsen Food & Gas,
21 after full disclosure of all the relevant facts, based on the
22 standards set out in Ward v. Richards & Rizanno, Inc., 51 Wn.App.
23 423, 754 P.2d 120 (1988).

24 3. The May 29, 2001, corporate resolution expired on its own
25 terms on or about August 27, 2001. No payment was ever made to Mr.
26 Harris pursuant to the May 29, 2001 corporate resolution.

1 4. The September 19, 2001 corporate resolution is not a
2 "modification" of the May 29, 2001 corporate resolution because the
3 May 29 corporate resolution had already expired on its own terms
4 approximately three weeks before the September 19, 2001 corporate
5 resolution was signed by Jeff and Amy Bertelsen as well as Bertelsen
6 Food & Gas, Inc., and was fair and reasonable. Further, even if the
7 September 19, 2001 corporate resolution was considered a
8 "modification" of either the March 21, 2001, hourly retainer
9 agreement or the May 29, 2001 corporate resolution, it was
10 nonetheless fair and reasonable, made after full disclosure and free
11 of undue influence based on the standards set out in Ward v. Richards
12 & Rizanno, Inc., 51 Wn.App. 423, 754 P.2d 120 (1988).

13 5. The only payment to Mr. Harris or to his law firm pursuant
14 to the September 19, 2001 corporate resolution was the payment of
15 \$72,500 pursuant to the closing of the Tesoro transaction which
16 occurred on October 31, 2001. That payment was reasonable and there
17 was no breach of fiduciary duty or egregious misconduct by Mr. Harris
18 in receiving that payment. Further, based on the number of hours Mr.
19 Harris had worked on the project on a contingent basis, if Jeff and
20 Amy Bertelsen had elected to pay Mr. Harris' reasonable hourly rate
21 of \$195 an hour, the amount they probably would have paid Mr. Harris
22 would have exceeded the \$72,500 payment.

23 6. Jeff and Amy Bertelsen, as well as Bertelsen Food & Gas,
24 Inc., knew of the basis for the payment and knew of the payment
25 itself as of October 31, 2001. Even if they had a valid breach of
26 fiduciary duty claim, any such claim was barred by the applicable
three year statute of limitations, RCW 4.16.080. The statute of

1 limitations was not extended by the discovery rule or the continuous
2 representation rule, even if those rules apply to a breach of
3 fiduciary duty cause of action.

4 7. Mr. Harris did not breach any fiduciary duty or engage in
5 any egregious misconduct in his representation of the Bertelsen
6 family members in the ARCO lawsuit. The potential conflict of
7 interest at the outset of the ARCO litigation was waived by the
8 clients.

9 8. Mr. Harris did not favor one client over the other during
10 his representation of the Bertelsen family members during the course
11 of the ARCO lawsuit. Further, Mr. Harris continually advised the
12 Bertelsen family members to seek independent counsel.

13 9. As to Jeff and Amy Bertelsen, they are not entitled to any
14 fee disgorgement with respect to Mr. Harris' work on the ARCO lawsuit
15 for a number reasons. Jeff and Amy Bertelsen have not shown that Mr.
16 Harris engaged in any egregious misconduct in his representation of
17 Jeff and Amy Bertelsen, as well as Bertelsen Food & Gas, Inc., in the
18 ARCO lawsuit.

19 10. Dr. and Mrs. Bertelsen's claim is \$45,000. A significant
20 portion of that payment did not go to Mr. Harris for his attorney
21 fees, but rather was paid to various third parties, including
22 experts, court reporters and payments to co-counsel, William Hames.
23 Even if Dr. and Mrs. Bertelsen were entitled to recovery under a fee
24 disgorgement theory for alleged breach of fiduciary duty, they are
25 only entitled to, at most, the attorney fees which Mr. Harris
26 ///

1 received, not the payment for expenses that were paid to third
2 parties.

3 11. Since Dr. and Mrs. Bertelsen have not proven egregious
4 misconduct by Mr. Harris or his law firm warranting fee disgorgement,
5 it is unnecessary for this court to determine which portion of the
6 expenses paid to third parties should be subtracted from the total
7 \$45,000 claimed by Dr. and Mrs. Bertelsen.

8 12. Mr. Harris did not breach the standard of care in his
9 representation of the Bertelsen family members in the ARCO lawsuit.
10 The assertion of the PMPA preemption defense involved the exercise of
11 informed judgment. The plaintiffs have failed to show any damages
12 were proximately caused by any conduct of Mr. Harris or his law firm
13 in asserting the PMPA preemption defense in the ARCO lawsuit.

14 13. Jeff and Amy Bertelsen are the only plaintiffs asserting a
15 CPA claim. (This court has already dismissed any CPA claims by Dr.
16 and Mrs. Bertelsen.) They have not shown any unfair or deceptive
17 billing conduct by Mr. Harris. Plaintiffs Jeff and Amy Bertelsen
18 have also failed to prove that the various fee agreements impacted
19 the public interest. Thus, plaintiffs have not satisfied the
20 requirements of RCW 19.86.090 and therefore Jeff and Amy Bertelsen,
21 as well as Bertelsen Food & Gas, are not entitled to any recovery
22 under the CPA.

23 14. Judgment shall be entered in favor of defendants Harris, as
24 well as the law firm, Harris Berne Christensen, on all claims
25 asserted by all plaintiffs.

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1 The foregoing Findings of Fact and Conclusions of Law are
2 herewith supplemented by the oral decision of the Court read into the
3 record on October 13, 2006, and the Supplemental Memorandum Opinion
4 dated October 23, 2006, which are by reference thereto incorporated
5 with the foregoing Findings of Fact and Conclusions of Law. The
6 Clerk of the Court shall enter judgment for the Defendants.

7 DATED this 23rd day of October, 2006,
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s/Lonny R. Suko

LONNY R. SUKO
UNITED STATES DISTRICT JUDGE